

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROY J. BOLUS,

Petitioner,

v.

9:01-CV-1189
(TJM)(GHL)

L.A. PORTUONDO,

Respondent.

APPEARANCES:

OF COUNSEL:

ROY J. BOLUS
Petitioner, *pro se*

OFFICE OF THE ATTORNEY GENERAL
State of New York
Attorney for Respondent

STEVEN H. SCHWARTZ, ESQ.
Assistant Attorney General

THOMAS J. McAVOY, SENIOR JUDGE

DECISION and ORDER

By Decision and Order filed September 26, 2007, the Report-Recommendation of Magistrate Judge George H. Lowe was accepted and adopted and the petition for habeas corpus relief filed by petitioner Roy J. Bolus was denied and dismissed. Dkt. No. 71. Petitioner appealed that dismissal to the United States Court of Appeals for the Second Circuit. Dkt. No. 74.

Petitioner has filed an application with this Court for leave to proceed with his appeal *in forma pauperis*. Dkt. No. 76. Petitioner has also requested the issuance of a certificate of appealability ("COA"). Dkt. No. 77.

On the basis of the information provided by petitioner, the Court finds that he has demonstrated sufficient economic need. The Court therefore grants his application to proceed *in forma pauperis* during the appeal of his case.

Turning to petitioner's request for a COA, appeals to the Court of Appeals in habeas corpus proceedings are governed by 28 U.S.C. § 2253, which provides in relevant part that:

- (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –
 - (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
 - (B) the final order in a proceeding under section 2255.¹

A COA may only be issued "if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

After reviewing the file, and for the reasons set forth in the Court's prior Decision and Order in this action, the Court finds that the petitioner has failed to make the showing required for issuance of a COA. Therefore, the Court denies his request.

WHEREFORE, it is hereby

ORDERED, that petitioner's *in forma pauperis* application (Dkt. No. 76) is granted, and it is further

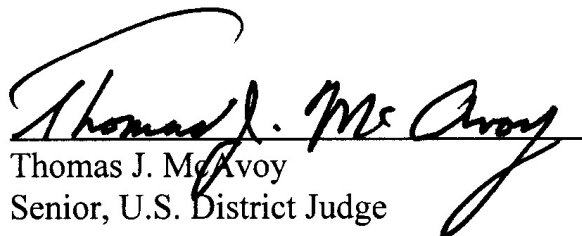
ORDERED, that petitioner's application for a COA (Dkt. No. 77) is denied, and it is further

ORDERED, that the Clerk serve a copy of this Order on the parties.

IT IS SO ORDERED.

Dated: November 7, 2007

¹ Rule 22 of the Federal Rules of Appellate Procedure also provides that an appeal may not proceed "unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c)." Fed.R.App.P. 22(b).


Thomas J. McAvoy
Senior, U.S. District Judge